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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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Services

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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER  
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Date:

**MAR 31 2010**

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

This petition, filed on April 28, 2008, seeks to classify the petitioner pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time he filed the petition, the petitioner was working as a research associate at the Fermi National Accelerator Laboratory (Fermilab). The petitioner is now an assistant professor in the Department of Physics at Wichita State University. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, we uphold the director's decision.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability.--

(A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner received his Ph.D. in Physics from Virginia Polytechnic Institute in August 2002. The director found that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states, in pertinent part:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

*Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We concur with the director that the petitioner works in an area of intrinsic merit, quantum physics,<sup>1</sup> and that the proposed benefits of his work, "research involving the measurements and properties analyses of particle interactions for the advancement of Quantum Chromo Dynamics" theory, would

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<sup>1</sup> "Physicists explore and identify basic principles and laws governing the motion, energy, structure, and interactions of matter. Some physicists study theoretical areas . . . . Physicists design and perform experiments with sophisticated equipment such as lasers, particle accelerators, electron microscopes, and mass spectrometers. On the basis of their observations and analysis, they attempt to discover and explain laws describing the forces of nature, such as gravity, electromagnetism, and nuclear interactions. Experiments also help physicists find ways to apply physical laws and theories to problems in nuclear energy, electronics, optics, materials, communications, aerospace technology, and medical instrumentation." See <http://www.bls.gov/oco/ocos052.htm>, accessed on March 5, 2010, copy incorporated into the record of proceeding.

be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Id.* at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

As stated above, the petitioner received his Ph.D. from Virginia Polytechnic Institute in 2002 and then began working as a research associate at the Fermilab. An April 10, 2008 letter from [REDACTED], states:

[The petitioner] is currently classified as a Research Associate in our MIPP [Main Injector Particle Production] Experiment in the Particle Physics division . . . . This is a term appointment, currently set to expire in September 2008, but under mutually agreeable circumstances, this appointment may be extended indefinitely (subject to a review of personal performance, Laboratory funding and program needs, as are all our positions at Fermilab).

Along with his copies of his published and presented work, the petitioner initially submitted several letters of support. In evaluating the reference letters, we note that letters concluding, with little explanation, that the petitioner meets the requirements set forth at *NYSDOT*, 22 I&N Dec. at 217-18, are insufficient. Similarly, letters that simply praise the petitioner's skills or the novelty and potential significance of his research are less persuasive than letters that provide specific examples of how the petitioner has already influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are the most persuasive.

[REDACTED] states:

[The petitioner] currently serves as the Commissioning Coordinator of the MIPP experiment with Fermi National Accelerator Laboratory, and is the driving force behind the experiment. He organized the installation of the detectors and has been acting in a leadership role in the day-to-day operation of the first MIPP physics run, which would not have been possible

without his unique expertise and knowledge of particle physics and interactions in quantum scale. The MIPP experiment was funded through Fermilab and Lawrence Livermore National Laboratory . . . .

It is because of [the petitioner's] unique experience and expertise gained through his research collaborations and projects with Virginia Polytechnic Institute and State University, DESY, and Fermi National Accelerator Laboratory that he is so desperately needed in the U.S. Without his expertise and leadership, the first physics run of the MIPP experiment would not have been possible, and he is now one of only a select few researchers driving the data analysis for publishing results. His understanding of Quantum Physics and QCD in the context of fundamental interactions is so rare that very few scientists in the world are able to match it. . . . Clearly, because of his unique background and expertise, [the petitioner] is able to serve the national interest to a far greater extent than the vast majority of his colleagues.

It cannot suffice to state that the alien possesses useful skills, or a "unique background." Regardless of the alien's particular experience or skills, even assuming they are unique, the benefit the alien's skills or background will provide to the United States must also considerably outweigh the inherent national interest in protecting U.S. workers through the labor certification process. *NYSDOT*, 22 I&N Dec. at 221.

further states:

The nature of his authority and stature in the field of quantum and particle physics can be seen from the extensive list of highly-regarded publications of his that have appeared in peer-reviewed journals. Throughout the course of his career, [the petitioner] has consistently contributed to the field of Physics and Quantum Theory, and the publication of his findings in major professional scientific journals within the specialty, presentation at international conferences and symposiums, frequent reference and citation by other research professionals throughout the field, and the award of major research grants from public and private sources all reflect on the importance of his work.

[The petitioner] has published numerous peer-reviewed manuscripts in some of the most respected and leading international journals in the field of particle and nuclear physics.

\* \* \*

Further evidencing the importance of his research to and the level of his recognition and acclaim within the field is [the petitioner's] citation record. As documented by the attached citation index record, [the petitioner's] research has been cited and referenced by other physicists and quantum physics researchers in their own work.

asserts that the petitioner "has published numerous peer-reviewed manuscripts in some of the most respected and leading international journals in the field of particle and nuclear physics," but the record includes evidence of only two journal articles in *Journal of Physics: Conference Series*

and *Nuclear Physics B*. Further, there is no evidence to corroborate [REDACTED] statement that the petitioner was awarded "major research grants from public and private sources." Moreover, contrary to [REDACTED] claim, the petitioner's initial evidence did not include an "attached citation index record" demonstrating that the petitioner's "research has been cited and referenced by other physicists and quantum physics researchers in their own work." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Finally, while [REDACTED] notes that the petitioner has published and presented his research, he does not provide specific examples of how the petitioner's findings are being applied by independent researchers in their work.

[REDACTED] states:

I have worked with [the petitioner] since 2002 when he joined the Fermi National Accelerator Laboratory as a post-doctoral fellow. He and I have collaborated on the MIPP.... This experiment measured the basic properties of proton, pion, and pion interactions with nuclei. The target nuclei ranged in atomic mass from hydrogen to uranium.

The data from MIPP has broad applications to basic science, homeland security, nuclear stockpile stewardship, and space exploration.

\* \* \*

Data from MIPP will have impacts beyond basic science. For example, proton radiography techniques which are used to image the Nation's aging stockpile of nuclear warheads will benefit from improved understanding of proton-nucleus interactions. Techniques to search for hidden nuclear material entering the U.S. in shipping containers will also benefit from MIPP's data on heavy nuclei. Data from MIPP will improve radiation shielding calculations required for manned exploration of space.

[The petitioner] has been a key member of the MIPP collaboration since its beginning and one of the key members of the team responsible for the successful run of the experiment. Currently, he is engaged in analysis of the data collected from the first run, and work on upgrades to the experiment for future running.

As previously discussed, eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218.

[REDACTED] states:

[The petitioner] is the most capable and talented of all the graduate students that I have had the pleasure to work with . . . .

[The petitioner] contributed greatly to the first measurements ever made of double polarization variables in pion-photoproduction. These measurements provided important constraints on models of the nucleon. Performing these measurements required a combination of expertise in particle detection, advanced techniques in cryogenics, spin target preparation, and data analysis. [The petitioner] excelled in all of these areas.

As an example of his potential for contributions to U.S. science, I will mention [the petitioner's] work with us at Brookhaven National Laboratory to develop highly spin-polarized samples of hydrogen duteride. This is a material that we have used for basic research into the properties of the proton and neutron. [The petitioner] was instrumental in working to understand how to make this material, its properties, and how to use it. As a result of this long and difficult development process, in which [the petitioner] played an important role, we have come to realize that highly spin-polarized hydrogen duteride might be capable of providing a more efficient fuel for future nuclear fusion reactors, and we are currently pursuing research, with Department of Energy funding, to develop this possibility.

\* \* \*

As described above, his involvement and work on the LEGS [Laser Electron Gamma Source] research could have a substantial and direct impact on the national interest because it has the potential to enhance the efficiency of future fusion reactors.

comments on the petitioner's "potential for contributions" and what could one day result from his work, but there is no evidence demonstrating that his past research has already significantly impacted the field. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

further states:

[The petitioner] has unique expertise in experimental nuclear and particle physics that is possessed by few individuals and that is not readily available in the U.S. labor market. The press has repeatedly stressed the lack of American born students who are entering the fields of science, engineering, and math. U.S. business leaders have stated that there is a growing shortage of qualified scientists and engineers to fill positions in their industries. . . . [The petitioner's] experience and training, and his intelligence and scientific capabilities, allows him to provide valuable insights into research areas that are not generally . . . available in the U.S. workforce.

We note that the employment certification process was designed to address the issue of worker shortages. A shortage of qualified workers in a given field, regardless of the nature of the occupation, does not constitute grounds for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 221.

states:

I have been [the petitioner's] second line manager for most of the last five and one half years, during which time [the petitioner] has been a postdoctoral Research Associate at Fermilab.

During his time at Fermilab, [the petitioner] has worked on MIPP, the "Main Injector Particle Production" experiment, an experiment being performed at Fermilab by a collaboration including approximately 60 physicists from 11 universities and three national laboratories. [The petitioner] joined MIPP while parts of the experimental apparatus that had been used previously were being refurbished. He quickly became a key player in the experiment and is now recognized as one of the leaders of the collaboration.

[The petitioner] has an international reputation as a high energy particle physicist. He has represented the MIPP collaboration in presentations to the United States Department of Energy and at international physics conferences. [The petitioner] is one of two primary authors of Fermilab Proposal-960. This is a proposal for an experiment to extend the results of the MIPP experiment. The new collaboration includes physicists from Russia and Germany as well as a number of American universities. [The petitioner] is an outstanding young scientist and I expect him to have a long and successful career. I hope that he will do so as a faculty member of an American university or national laboratory.

describes the petitioner's activities at Fermilab, but he does not provide examples of how the petitioner's work is already influencing the field. notes that the petitioner has coauthored an experimental proposal at Fermilab. However, without evidence showing that this project has produced particularly influential results, the petitioner's involvement with the project cannot serve as evidence that a job offer in the national interest is warranted.

states:

My knowledge of [the petitioner's] work has been gained through five years of collaborative research.

[The petitioner] is one of the most outstanding scientists that I have had an opportunity to work with in my 30 year long career. He possesses unique expertise in the field of experimental particle physics. His research in the area of non-perturbative QCD requires the measurement of particle production cross section. These measurements are experimentally very challenging. Only few individuals have the expertise to successfully perform these measurements using particle detectors that are comprised of tens of thousands of individual detector elements using a variety of technologies. [The petitioner] has established a reputation as a competent experimentalist which is recognized both in and out of the United States for his skills.

\* \* \*



[The petitioner] has unique expertise in experimental particle physics that is possessed by few individuals and that is not readily available on the U.S. labor market. [The petitioner's] unique background allows him to provide valuable insights into research areas that would not generally be available to the U.S. workforce.

As stated in *NYSDOT*, 22 I&N Dec. at 221, it cannot suffice to state that the petitioner possesses useful skills, or a "unique background." In addition, while [redacted] asserts that the petitioner's expertise in experimental particle physics is not readily available in "the U.S. labor market," *NYSDOT* rejects that argument. *Id.* at 221. When discussing claims that the beneficiary in that case possessed specialized design techniques, the AAO asserted that such expertise:

would appear to be a valid requirement for [a] petitioner to set forth on an application for a labor certification. [The] assertion of a labor shortage, therefore, should be tested through the labor certification process. . . . The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor.

*Id.* at 220-221.

On January 27, 2009, the director requested the petitioner to submit evidence demonstrating his "achievements in the field including their impact and significance." In response, the petitioner submitted additional letters of support, four unpublished Ph.D. dissertations that cite to his work, a [redacted] prepared by [redacted] who acknowledges the petitioner's assistance, and a [redacted] paper by [redacted] that cites to an article authored by the petitioner. The petitioner also submitted a document entitled "List of Publications and Conference Talks with citation information." According to this document and the submitted citations, two of the petitioner's articles had been cited to an aggregate of seven times as of the date of filing. We note that five of the citing articles were unpublished Ph.D. theses, one of the citing articles appears to be a self-citation by the petitioner, and the remaining citing article was by [redacted]. Numerous independent citations for an article authored by the petitioner would provide solid evidence that others in his field have been influenced by his work and are familiar with it. On the other hand, few or no citations of an article authored by the petitioner may indicate that his work has gone largely unnoticed by other scientists working in his field. In this case, the citation evidence submitted by the petitioner is not sufficient to demonstrate that his work has significantly influenced his field as a whole or otherwise sets him apart from other researchers in his field.

[redacted], states:

My knowledge of [the petitioner's] work has been gained through personal interaction on a collaborative research project, which took place at Brookhaven National Laboratory. I supervised two graduate students who worked on the same project as did [the petitioner], and so I am intimately familiar with his work, too.

\* \* \*

[The petitioner] possesses unique expertise in the fields of medium-energy and high-energy nuclear physics. His research on the production of pi-mesons from experiments using beams of polarized photons at Brookhaven National Lab and using particle beams at Fermi National Accelerator Lab (FNAL) gives him experience at the interface between medium-energy and high-energy nuclear physics, which few people possess. . . . His presentation at the Gordon Conference on Photonuclear Physics, which is a prestigious international conference, shows that he is respected and valued within this community of international scientists. By the nature of this conference, there are no published proceedings (in order to encourage the presentation of preliminary data). His talk was well received. [The petitioner] is an invaluable and essential member of a small team of researchers working with the Laser Electron Gamma Source (LEGS) Collaboration, which continues to publish research papers even after the leader of this group moved to Jefferson Lab.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. In this case, the record does not establish that the petitioner's work represented a significant advance in nuclear physics.

further states:

My experience and opinion is that there [are] few individuals with this level of expertise in medium-energy physics. His involvement and work on the research project with the LEGS and MIPPS Collaborations has a substantial and direct impact on the national interest because this research is supported by the Department of Energy and the National Science Foundation, showing the importance of this basic research. Although this research is not likely to result in direct applications in the next decade, this research is important for the longer term future where the strong interaction between particles will lead to new applications, just as the knowledge of nuclear physics from 50 years in the past is now applied routinely in applications such as cancer radiation treatments.

As previously discussed, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *NYS DOT*, 22 I&N Dec. at 221. Similarly, arguments about the overall importance of the petitioner's field of research may establish the intrinsic merit of his work, but such general arguments cannot suffice to show that an individual worker in his field qualifies for a waiver of the job offer requirement. *Id.* at 218. Finally, [redacted] notes that although the petitioner's work is "not likely to result in direct applications in the next decade," his research "will lead to new applications" at some unspecified date in the future. A petitioner, however, cannot file a petition under this classification based on the expectation of future eligibility.

See *Matter of Katigbak*, 14 I&N Dec. at 49. [REDACTED] does not provide examples of how the petitioner's work has already been applied by others or otherwise significantly influenced his field.

[REDACTED] states:

I have been working with [the petitioner] since 2002 when he took a position at Fermi National Accelerator Laboratory. We have been collaborators on the Main Injector Particle Production (MIPP) experiment.

\* \* \*

I offered [the petitioner] a faculty position . . . and [the petitioner] joined the faculty at Wichita State University in August 2008.

The number of [the petitioner's] publications currently does not fully reflect his significance in the field. . . . [The petitioner] choose *[sic]* to work on an important smaller experiment that did not have this volume of publications. Furthermore the time scales for experiments in particle physics are large. Most of the publications from the MIPP experiment have not been written yet because the analysis takes a long time.

However, [the petitioner's] work is well known in the particle physics community due to his conference presentations, [and] personal communication with colleagues at Fermi National Accelerator Laboratory. . . .

\* \* \*

[The petitioner's] presentation at the BEACH [conference series on Hyperons, Beauty and Charm Hadrons] 2004 conference received a lot of attention. Having seen [the petitioner] in discussions with other conference attendees, I can attest to [the petitioner's] high impact on his peers and the field.

At the American Physical Society's Topical Group on Hadron Physics meeting in 2006 [the petitioner] presented unpublished results on the feasibility of low momentum beams in the MIPP experiment, an analysis that he did single-handedly. This presentation led to interest in the MIPP experiment upgrade from scientists in several countries.

We agree with [REDACTED] that the number of the petitioner's publications does not fully reflect his significance in the field. Rather, for researchers, citations offer an objective way of measuring the extent to which a researcher's work has influenced the work of others in the field. In this case, however, the record lacks independent citation evidence showing that the petitioner's published and presented work has significantly impacted his field. While [REDACTED] notes that the petitioner's presentations "received a lot of attention" and "led to interest in the MIPP experiment upgrade," he does not provide specific examples of how the petitioner's work is being applied or utilized by independent researchers in the quantum physics field.

[REDACTED] states:

I have known [the petitioner] since he was a graduate student in my group at Brookhaven National Laboratory. [The petitioner] joined my group in 1998 as a student enrolled at Virginia Polytech Institute and State University . . . .

\* \* \*

[The petitioner's] involvement and work on the MIPP experiment has a substantial and direct impact on the national interest through the continued development of our understanding of the fundamental building blocks of matter.

[The petitioner] has unique expertise in nuclear and particle physics that is possessed by few individuals. His unique background allows him to provide valuable insights into research areas that would not generally be available to the U.S. workforce.

As previously discussed, it cannot suffice to state that the petitioner possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *NYSDOT*, 22 I&N Dec. at 221. Similarly, arguments about the overall importance of the petitioner's field of research may establish the intrinsic merit of his work, but such general arguments cannot suffice to show that an individual worker in his field qualifies for a waiver of the job offer requirement. *Id.* at 218.

The director denied the petition stating that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. The director stated that the record lacked evidence showing that the petitioner's work was frequently cited. The director also noted that many of the letters of support were from the petitioner's coworkers and research associates. While such letters from the petitioner's immediate circle of colleagues are important in providing details about his role in various projects, they cannot by themselves establish the petitioner's influence over the field as a whole.

On appeal, the petitioner submits additional letters of support.

[REDACTED] at the National Institute of Nuclear Physics in Italy and Associate Scientist at the European Organization for Nuclear Research in Switzerland, states:

I know [the petitioner] since more than 4 years, starting 2004 when he was a brilliant Research Associate at Fermilab, fully involved in the preparation of the MIPP experiment.

From 2002 to 2009, we shared scientific interests in the same field (Neutrino Physics), even if participating in different experiments. I had several occasions to meet him, and to have detailed scientific discussions.

\* \* \*

[The petitioner] gave several important contributions to the construction of the MIPP detector by addressing and solving key problems. For instance, he has designed and successfully implemented the Trigger of the experiment, the heart of any high energy physic[s] detector.

further states that the petitioner has "published extensively papers in internationally-circulated journals," but the record includes evidence of only two journal articles in *Journal of Physics: Conference Series* and *Nuclear Physics B*. Moreover, does not provide examples of how the petitioner's work has been applied by others or has otherwise significantly influenced his field.

of the Institute for Elementary Particle Physics Research and Hilldale and states:

I am the Principal Investigator of the IceCube Project, a major physics experiment headquartered at University of Wisconsin, Madison.

\* \* \*

I am extremely grateful for the key role he plays in the Main Injector Particle Production (MIPP) experiment at Fermi National Accelerator Laboratory. [The petitioner] contributed to this project as an experienced physicist with solid training on particle physics experiments.... His leadership role in the MIPP experiment has been recognized by his selection as its run coordinator. The MIPP experiment not only contributes to the intellectual effort to understand the structure of matter, it gathers information that is of critical value for the scientific interpretation of the data of other experiments, including my own.

The MIPP experiment studies with unprecedented precision the production of secondary particles when pions, kaons, protons and anti-protons collide with a target. Among the secondary particles produced are neutrinos, the focus of the IceCube experiment, as well as a wide range of other neutrino experiments worldwide. MIPP studies the mechanism by which neutrinos are produced in the Earth's atmosphere in an accelerator environment. . . . By matching the anticipated flux of atmospherically produced neutrinos to our data, we calibrate IceCube. This is an essential step prior to any scientific exploitation of the IceCube detector: to make use of neutrinos as astronomical messengers. The MIPP data have performed this critical role for other experiments, including the Superkamiokande experiment in Japan that discovered that atmospheric neutrinos have mass. This is arguably the most important discovery in particle physics in several decades.

As previously discussed, arguments about the overall importance of the MIPP project may establish the intrinsic merit of the petitioner's work, but such general arguments cannot suffice to show that his participation in the project qualifies for a waiver of the job offer requirement. *NYSDOT*, 22 I&N Dec.

at 218. [REDACTED] states that the petitioner has served as a "run coordinator" for the ongoing MIPP experiment, but there is no evidence showing that the petitioner's specific contributions to the Superkamiokande experiment or to the IceCube Project were particularly influential. For instance, with regard to the Superkamiokande experiment, there is no evidence showing that the petitioner was among the coauthors whose published findings reported the discovery that atmospheric neutrinos have mass.

[REDACTED] in Physics (1988), states:

The importance of [the petitioner's] work is well appreciated in the particle physics community. The measurements he is engaged in will result in new data in particle production that impacts areas as diverse as atmospheric cosmic ray experiments, neutrino physics, and calorimetry. They will also provide important insights into the working of the strong interaction in the non-perturbative regime that is currently poorly understood. An experiment like MIPP is not easy to do. The experiment combines detectors using the most modern particle detection techniques. The data analysis is complex and time consuming. [The petitioner's] expertise in this regard is unique and cannot be easily replaced.

Simple training in advanced technology or unusual knowledge, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Id.* at 221. [REDACTED] expresses his opinion that the petitioner's work "will result in new data in particle production" that impacts various areas and "will . . . provide important insights" in the field. With regard to the witnesses of record, many of them they discuss what may, might, or could one day result from the petitioner's work, rather than how his past research has already influenced the field as a whole. [REDACTED] further states that the petitioner is "an exceptionally talented physicist with the potential for a long, successful career in the field of physics." As previously discussed, a petitioner cannot file a petition under this classification based on the expectation of future eligibility. *See Matter of Katigbak*, 14 I&N Dec. at 49.

[REDACTED], states:

During the nearly forty years that I have spent at [REDACTED] as an active research scientist, I have met many young researches [*sic*] in particle physics and I can write that [the petitioner] is an exceptionally talented physicist. . . . There is no doubt in my mind that he has a long, successful career in particle physics in front of him and that he has the potential to contribute in fundamental ways to our understanding of the behavior of elementary particles.

[The petitioner] is a key member of the MIPP Experiment and the proposed upgrades to MIPP. The new experiment will acquire important data on particle production that will impact a wide range of experiments addressing the fundamental properties of neutrinos, cosmic ray physics, and calorimetric simulation of particle showers. It will also improve the understanding of the strong interaction in the non-perturbative regime. The Fermilab long baseline neutrino experiments lead the world and the upgraded MIPP Experiment will improve the accuracy of those neutrino experiments. I strongly believe that the U.S should

endeavor to keep talent such as [the petitioner's] in areas such as particle physics where such talent is hard to come by.

In the same manner as [REDACTED], [REDACTED] focuses on the overall importance of the petitioner's ongoing work and his "potential to contribute in fundamental ways to our understanding of the behavior of elementary particles," rather than how the petitioner's prior work has significantly influenced his field to an extent that justifies a waiver of the job offer requirement.

On appeal, counsel argues that the director's "the expectation of numerous . . . citations in this case is misplaced" due to the length of time involved in planning, funding, designing, and conducting data analysis for the petitioner's complex and sophisticated projects. We cannot ignore, however, the letter from [REDACTED] and others emphasizing the petitioner's citation record. Counsel states that "numerous publications have not resulted yet from these experiments simply because the necessary data analysis for all findings has not yet been completed. Citations by other researchers are expected to grow exponentially once findings from these experiments are more fully published." A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

Regardless, we note that citations are not the only means by which to show the petitioner's impact on his field. Independent witness letters can also play a significant role in this respect. Here, however, the petitioner has submitted only a few such letters, which collectively fail to establish the depth or extent of his influence on the field as whole. The content of the letters of support has already been addressed in our discussion of the submitted evidence. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

In this matter, we are not persuaded that the record contains sufficient evidence of any type that demonstrates the petitioner's influence in the field as a whole. While the petitioner has contributed to projects undertaken by Fermilab and Brookhaven National Laboratory, he has not established that his past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. We note that the national interest waiver contemplates that the petitioner's influence be national in scope. *NYSDOT*, 22 I&N Dec. at 217 n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219 n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole.")

As is clear from a plain reading of the statute, it was not the intent of Congress that every alien of exceptional ability should be exempt from the requirement of a job offer based on national interest.

Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given occupation, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

**ORDER:** The appeal is dismissed.